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June 6, 2008

**NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
NJ NOISE CONTROL COUNCIL
STAKEHOLDERS MEETING ON THE
DRAFT OFF-HIGHWAY VEHICLE NOISE MODEL ORDINANCE
MEETING MINUTES OF JUNE 3, 2008**

ATTENDEES:

Kenneth Daly (Township Manager, Franklin Township, Somerset Co)
John Parrinello (NJ Chapter of the National Off Highway Vehicle Conservation Council & VP Advocacy
Director NJ Off Highway Vehicle Association)
Carol Chamberland (Lawrence Twp.)
Jaclyn Rhoads (Pinelands Preservation Alliance)
Capt. Mark Boyd (Lawrenceville)
Kenny Dean (Off Road Vehicle Park)
Michael Keith (Off Road Vehicle Park)
Dale Freitas (President of NJ Off Highway Vehicle Association)
Deborah Pinto (NJDEP, Office of Local Environmental Management)
David Triggs (NJDEP, Office of Local Environmental Management)
Julie Townsend (NJDEP, Office of Local Environmental Management)
Joe Lepis (Chair, NJ Noise Control Council)
Arnold Schmidt (NJ Noise Control Council)
Jerome Feder (NJ Noise Control Council)
Eric Zwerling (Director of the Rutgers Noise Technical Assistance Center)

HANDOUTS:

1. Agenda
2. Draft Model ORV ordinance as of June 3, 2008
3. Additional considerations for prohibited acts

INTRODUCTION/PURPOSE OF MEETING

Deborah Pinto, NJDEP. The New Jersey Noise Control Council (NCC) in conjunction with Department of Environmental Protection (DEP), has been working on developing a model noise ordinance for Off Road Vehicles (ORV). In recent years the DEP has received a growing number of inquiries and concerns from residents and municipalities about the prevalence of these vehicles and the noise they emit. NCC is required to hold an annual public meeting, and feels that discussing the model noise ordinance for ORV is an appropriate topic. NCC and the DEP are developing this model ordinance as guidance for

municipalities. Both NCC and DEP seek to have consistent regulations throughout the State for ease of compliance as well as consistent enforcement. Additionally, both NCC and DEP prefer instituting noise standards based on measurable levels, as opposed to nuisance standards (i.e., excessively loud) because of the subjective nature of nuisance standards. It is the intention of the DEP to release a finalized version of the model at the League of Municipalities Conference in November 2008. Additionally, the DEP, with guidance from the NCC is updating the general model ordinance and plans to release it in November as well. Currently there is a proposal to set aside state land for the development of ORV parks; however, this meeting is not to discuss that topic. Additionally, the State legislature is proposing a bill, independently of NCC, that primarily focuses safe operation of these vehicles. This meeting is not intended to discuss the proposed legislation.

Joe Lepis, NCC. The State's Noise Control Regulations only apply to sound emitted from industrial, commercial, public service and community service facilities. Under the Noise Control Act, municipalities have the ability to adopt local noise ordinances to address other source categories. Local noise ordinances must be consistent with, and more stringent than, the state regulations, as well as be approved by the DEP. Because the DEP will approve the language of this model ordinance, if a township adopts the model, it is immediately approved by DEP. The model ORV ordinance is based on a standard of 65-decibel daytime limit and 50 decibel nighttime limit, to protect speech and sleep, respectively.

COMMENTS ON DRAFT ORV ORDINANCE

Mr. John Parrinello recommends using the term off-highway vehicle (OHV) as opposed to all-terrain vehicle, or off-road vehicle; off highway vehicle is a national terminology. Mr. Parrinello inquired as to why the model ordinance does not refer to the SAE standards for measuring noise emitted from the vehicle. Eric Zwerling, Director of the Rutgers Noise Technical Assistance Center responded stating that measuring under SAE standards is not practical for field measuring; NCC is interested in noise measured at the property line of the affected person, not total noise emitted from vehicle. Mr. Parrinello stated that the NCC should consider the noise measured at the actively used portion of the property, not at the property line. Mr. Parrinello suggested that the NCC consider creating different noise standards for different vehicles, specifically regarding older versus newer vehicles. Mr. Parrinello inquired about the origin of the \$3,000 penalty for violations. Representatives from the NCC responded, stating that \$3,000 is the maximum penalty allowed as established in the State Noise Control Regulation. The actual penalty assessed to violators is at the discretion of the enforcement officer. Lastly, Mr. Parrinello inquired about the exemption for state and emergency vehicles, suggesting that additional wording be included, such as "at all other times these vehicles must comply."

Mr. Dale Freitas expressed his concern that an ordinance as such is discriminatory in nature. He stated that lawn-mowing equipment can be equally as loud but not in violation of the proposed ordinance. NCC responded stating that the lawn mowing and landscaping equipment is regulated in the general model ordinance, if a township so chooses to adopt that passage. Mr. Freitas stated that an exemption should be included for maintenance of vehicles in a residential area. Mr. Freitas also requested a time frame associated with this ordinance to allow industry and manufacturers to comply with American Motorcycle Association requirement. Mr. Freitas inquired about how this ordinance would be enforced across township borders. For example, if the alleged offender resided in one township and the complainant resided in another.

Mr. Kenny Dean stated that the decibel levels set in the draft model ordinance are too restrictive, based on a distance of 400 feet. Additionally, he finds this model discriminates against ORVs, when lawn mowers and landscaping equipment produce comparable noise emissions. Mr. Dean requested that an exemption for ORV safety training classes be included in the model ordinance. He offers such classes,

which he sees as a benefit to the public and community by educating individuals on properly operating ORVs. He does not believe that his classes would be able to meet the standards as currently established in the draft model ordinance, therefore, potentially he would no longer be able to offer safety classes at the current location.

Mr. Kenneth Daly pointed out that the model does not include a definition of protected property. He recommends using such term.

Jaclyn Rhoads inquired as to how the section entitled “Severability and Repealer” affects townships that already adopted some type of ordinance regulating ORV use, specifically municipalities within the Pinelands. Deb Pinto of NJDEP stated that this ordinance would override the noise standards established in the existing ordinance. If the municipality so chooses, it could substitute the language from the NCC approved model ordinance in the township’s existing ordinance that address several ORV issues.

Mr. Lepis stated that section VI. (4), referring to vehicle impoundment is a remnant of previous version of the model, and should be removed.

A discussion took place on the following topics:

- (1) Allow exceedances of the noise standards so long as proper notification to all neighbors within specified distances. Reasonable attempt at finding middle ground.
- (2) Inquiry made about the credentials of the noise control officers and noise control enforcement personnel. Eric Zwierling, Director of the Rutgers Noise Technical Assistance Center, described the three-day training course that is required for any individual in the State of New Jersey to conduct noise enforcement.
- (3) CEHA agencies would enforce a township’s approved ORV ordinance, only if there is a Uniform Shared Services agreement between the two parties. Without such agreement CEHA agencies only enforce those standards under the State of NJ Noise Control Act and its regulations
- (4) Inclusion of an exemption for allowing maintenance of ORV to enable owners to service their vehicles, which could include turning on the vehicle. Considerations include curfew hours for this activity, setting a frequency and duration standard. Consensus was that this provision must allow for predictability.
- (5) The 400 feet daytime standard and 800 feet nighttime standard is based on the 90 dBA vehicle muffler limit. The actual limit may be different (96 dBA), possibly requiring the NCC to recalculate the distances.

CONCLUSION

The NCC will meet Tuesday June 10, 2008 to discuss all of the suggestions made at the stakeholders meeting.

If you or your organization has additional comments or alternative language, please email David Triggs at David.Triggs@dep.state.nj.us or mail to:

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Once the NCC and DEP approve the language for the model ordinance, a final version will be distributed to municipalities.

noise orv/orv stakeholder meeting minutes 6308